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FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 17 2013

OFFICE OF
MANAGING DIRECTOR

Nicolas Kassis
Tiscali USA, Inc.
1000 N. West St., Suite 1200
Wilmington, DE 19801

Re: Waiver Request (47 Late Payment Penalty; 47
U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1164(c))
Licensee/Applicant: Tiscali USA, Inc.
Station: N/A
Fee: FY 2012 Late Payment Penalty
Date Request Filed: Sep. 14, 2012
Date Regulatory Fees Paid: Sep. 14, 2012
Date Regulatory Late Penalties Paid: Sep. 14, 2012
Fee Control No.: RROG-12-00015791

Dear Mr. Kassis:

This responds to Licensee's *Request*¹ for waiver and refund of the penalties for late payment of FY 2012 regulatory fees. For the reasons stated herein, we must deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty. Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."³

Each year, the Commission establishes the final day on which payment may be made before it is late, *i.e.*, a deadline, after which the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164 will be imposed, and interest, penalties, and charges of collection will accrue under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. The FY 2012 payment was due not later than September 13, 2012.⁴ Licensee's payment was not received until September 14, 2012, thus Licensee failed to meet this obligation. Licensee asserts that it "ha[d] been checking the FCC site's "Pay Bill" regularly ... [t]his year, the bill was displayed

¹ Letter from Nicholas Kassis, Tiscali USA, Inc., 1000 N. West St., Suite 1200, Wilmington, DE 19801 to, Attn: Office of Managing Director, Regulatory Fee Waiver/Reduction Request, Marlene H. Dortch, Secretary, FCC, 445 12th St., S.W., Rm TW-B204, Washington, DC 20554 (Sep. 14, 2012) (*rec'd* Sep. 19, 2012)(*Request*).

² 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

³ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

⁴ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

differently and was added under “Regulatory fees” without any notification to the users ... [Licensee] wanted to call ... to request more information ... [t]he due date for the Regulatory Fee was also not shown on the bill ... no indication on the online FRN account as to when the bill was due ... missed due date by one day only ... [penalty] is somehow unmerited ... lack of clarity of information ... contributed to the confusion and payment delay.”⁵ These matters are not a legal grounds or clear mitigating circumstances to waive collection of the penalties. The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”⁶ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.⁷ The Commission explained that, “[c]onsistent with [its] proposal to require mandatory use of Fee Filer ... pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail.”⁸ On July 31, 2009, the Commission released its order adopting these proposals,⁹ and notifying regulatees that “because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online.”¹⁰ Thereafter, the Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”¹¹ Finally, on September 2, 2009, the Commission released a third public notice that **“HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.”**¹²

Similarly, in 2010, the Commission’s final order on the FY 2010 regulatory fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”¹³ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁴

⁵ Request.

⁶ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

⁷ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009).

⁸ *Id.* at 5973, ¶ 20.

⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹⁰ *Id.* at 10309, ¶ 26.

¹¹ *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹² *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

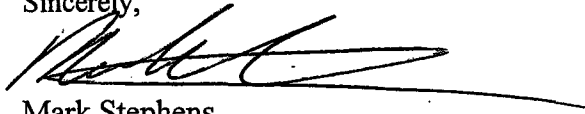
¹³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

¹⁴ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923, ¶ 12 (2010).

Every licensee is obliged to make the fee payment by the deadline. Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁵ The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. If the penalty it is to be waived, it is "only in the most extraordinary circumstances,"¹⁶ which Licensee did not establish. Thus, we must deny the *Request*.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Mark Stephens', is written over a horizontal line.

Mark Stephens
Chief Financial Officer

¹⁵ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁶ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).



Received & Inspected

SEP 19 2012

FCC Mail Room

Attn: Office of the Managing Director, Regulatory Fee Waiver/ Reduction Request
Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

September 14, 2012

Re: FRN 0018819136
Request for waiver of Regulatory Fees penalty charge of \$2,002.50

Dear Ms. Dortch,

This is to request your kind office to please waive the late penalty charge of \$2,002.50. We have sent a full payment for the FCC regulatory fees, today on September 14th. We strongly believe that the late penalty fee is undeserved due to the following facts:

- We have been checking the FCC site's "Pay Bill" section regularly since the 1st week of September as we knew there was a bill due soon, but it was showing "You have no outstanding bills".
- The features of the website changed. We used to check the "Pay Bill" section where all FCC bills were shown in the previous years. This year, the bill was displayed differently and was added under "Regulatory fees" without any notification to users. It was only 3 days ago that we noticed the bill is under "Regulatory Fees" section and not "Pay Bill" section.
- We wanted to call you to request more information about how to proceed because there were four different options to pay the bill and we thought the expected bill is due mid to late September, like in the previous years.
- The due date for the Regulatory Fee was also **not shown on the bill**. There was no indication on the online FRN account as to when the bill was due.
- We called the Help desk today to inquire and get more information about this bill and the various payment methods shown online, and found out that we missed the due date by one day only, and had incurred a late fee, which is quite a lot.
- This is somehow unmerited as we had every intention to pay this bill on time.
- Unfortunately, the lack of clarity of information on the e-filing FCC website, plus the limited communication contributed to the confusion and payment delay.

TISCALI USA, INC.
1000 N. West St. Suite 1200
Wilmington, DE 19801



As of today, September 14th, we have already paid the \$8,010 Fee plus the Penalty amount of \$2,002.50, for a total of [REDACTED] via ACH, as we didn't want to incur any more undeserved penalties of 1% per day. Agency tracking number [REDACTED].

Thank you so much for your kind consideration, and we look forward to a favorable response.

Sincerely,

Nicolas Kassis
Tiscali USA Inc.
FRN 0018819136

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